

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

ELMER MILLS, JR.,

Plaintiff,

v.

CIVIL ACTION NO. 1:04-1052

THOMAS MCBRIDE, Warden,  
Mount Olive Correctional Complex,

Defendant.

**MEMORANDUM OPINION AND ORDER**

By Standing Order, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of findings and recommendations regarding disposition pursuant to 28 U.S.C.A. § 636(b)(1)(B). Magistrate Judge VanDervort submitted to the court his Findings and Recommendation on July 30, 2007, in which he recommended that the District Court deny plaintiff's motion to withdraw his petition, grant defendant's motion for summary judgment, dismiss plaintiff's petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody, and remove this matter from the court's docket.


In accordance with the provisions of 28 U.S.C.A. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation within the thirteen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **DENIES** plaintiff's motion to withdraw his petition, **GRANTS** defendant's motion for summary judgment, **DISMISSES** plaintiff's petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody, and **DIRECTS** the Clerk to remove this matter from the court's docket.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

**IT IS SO ORDERED** this 30th day of August, 2007.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
United States District Judge